

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ASHINC CORPORATION, *et al.*¹,

Debtors.

Chapter 11

Bankruptcy Case No. 12-11564 (MFW)

(Jointly Administered)

CATHERINE E. YOUNGMAN, LITIGATION
TRUSTEE FOR ASHINC CORPORATION,
ET. AL., AS SUCCESSOR TO THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS
OF ASHINC CORPORATION, AND ITS
AFFILIATED DEBTORS

Plaintiff,

BDCM OPPORTUNITY FUND II, LP, BLACK
DIAMOND CLO 2005-1 LTD., and
SPECTRUM INVESTMENT PARTNERS, L.P.,

Intervenors,

v.

YUCAIPA AMERICAN ALLIANCE FUND I,
L.P., and YUCAIPA AMERICAN ALLIANCE
(PARALLEL) FUND I, L.P.,

Defendants.

Bankruptcy Adv. Proc. No. 13-50530
(MFW)

Civ. Action No. 1:21-cv-00994-CFC

¹ The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: ASHINC Corporation (f/k/a Allied Systems Holdings, Inc.) (58- 0360550); AAINC Corporation (f/k/a Allied Automotive Group, Inc.) (58-2201081); AFBLLC LLC (f/k/a Allied Freight Broker LLC) (59-2876864); ASCCO (Canada) Company (f/k/a Allied Systems (Canada) Company) (90- 0169283); ASLTD L.P. (f/k/a Allied Systems, Ltd. (L.P.)) (58-1710028); AXALLC LLC (f/k/a Axis Areta, LLC) (45 5215545); AXCCO Canada Company (f/k/a Axis Canada Company) (875688228); AXGINC Corporation (f/k/a Axis Group, Inc.) (58-2204628); Commercial Carriers, Inc. (38-0436930); CTSINC Corporation (f/k/a CT Services, Inc.) (38 2918187); CTLLC LLC (f/k/a Cordin Transport LLC) (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582).

CATHERINE E. YOUNGMAN, LITIGATION TRUSTEE FOR ASHINC CORPORATION, ET AL., AS SUCCESSOR TO BDCM OPPORTUNITY FUND II, LP, BLACK DIAMOND CLO 2005-1 LTD., SPECTRUM INVESTMENT PARTNERS, L.P., BLACK DIAMOND COMMERCIAL FINANCE, L.L.C., as co-administrative agent, and SPECTRUM COMMERCIAL FINANCE LLC, as co-administrative agent,

Plaintiff,

v.

YUCAIPA AMERICAN ALLIANCE FUND I, L.P., and YUCAIPA AMERICAN ALLIANCE (PARALLEL) FUND I, L.P.,

Defendants.

Bankruptcy Adv. Proc. No. 14-50971
(MFW)

Civ. Action No. 1:21-cv-00995-CFC

JOINT STATUS REPORT REGARDING APPEALS

Defendants-Appellants Yucaipa American Alliance Fund I, L.P., and Yucaipa American Alliance (Parallel) Fund I, L.P., (collectively “Yucaipa” or “Defendants”), and Appellee-Plaintiff Catherine E. Youngman, in her capacity as the Litigation Trustee and Plan Administrator (the “Trustee” or “Plaintiff,” and together with the Defendants, the “Parties”) hereby submit this joint status report to the Court in above-captioned relevant proceedings.

1. On February 1, 2013, the Official Committee of Unsecured Creditors in the bankruptcy case filed a complaint initiating adversary proceeding number 13-50530, and an amended complaint was filed on March 14, 2013, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2. On November 19, 2014, BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 Ltd., and Spectrum Investment Partners, L.P. filed a complaint initiating adversary

proceeding number 14-50971. Adversary proceeding numbers 13-50530 and 14-50971 are collectively referred to herein as the “Adversary Proceedings.”

3. Under the Debtors’ Modified First Amended Joint Chapter 11 Plan of Reorganization dated December 3, 2015, approved by the Bankruptcy Court, and the Litigation Trust Agreement dated December 20, 2016, the Adversary Proceedings are now jointly prosecuted by the Plaintiff.

4. Following briefing on cross motions for summary judgment, on May 4, 2021, the Bankruptcy Court issued an opinion granting in part and denying in part, the Parties’ cross motions for summary judgment on many of the claims asserted in the Adversary Proceedings. On June 23, 2021, the Bankruptcy Court entered a judgment implementing that ruling (the “2021 Judgment”) [Adv. Pro. No. 13-50530, D.I. 841; Adv. Pro. No. 14-50971, D.I. 579].

5. Yucaipa filed a motion to stay the Judgment pending appeal, which the Bankruptcy Court denied. On July 6, 2021, Yucaipa filed notices of appeal of the 2021 Judgment, which are pending and docketed as the above-captioned matters at Civil Action No. 21-cv-994 and 21-cv-995. Yucaipa also sought a stay of the 2021 Judgment pending appeal in this Court, but the motion was denied [Civ. Action No. 21-cv-994, D.I. 35; Civ. Action No. 21-cv-995, D.I. 35].

6. On August 2, 2021, Judge Thyng issued a recommendation to refer these appeals to mediation [Civ. Action No. 21-cv-994, D.I. 33; Civ. Action No. 21-cv-995, D.I. 33] (the “Recommendation”).

7. On August 11, 2021, the Court overruled the Recommendation insofar as the imposition of stay but adopted the Recommendation in all other respects, including to refer the appeals to mediation [Civ. Action No. 21-cv-994, D.I. 40; Civ. Action No. 21-cv-995, D.I. 40].

8. Since that time, the Parties have engaged in mediation with Judge Weinstein and Mr. Melnick over various issues in an attempt to resolve these appeals and related actions that are

pending before the Court, including :

- *Youngman v. Yucaipa American Alliance Fund I, LLC et al.*, Civ. Action No. 22-cv-302-CFC (D. Del.);
- *Youngman v. Yucaipa American Alliance Fund I, L.P. et al.*, Civ. Action Nos. 22-cv-197-CFC, 22-cv-198-CFC (D. Del);
- *Youngman v. Yucaipa American Alliance Fund I, L.P. et al.*, Civ. Action Nos. 22-cv-634-CFC, 22-cv-635-CFC (D. Del);
- *Youngman et al. v. Yucaipa American Alliance Fund I., L.P. et al.*, Civ. Action No. 21-1060-CFC (D. Del.), and subsequent appeal captioned *Youngman et al. v. Yucaipa American Alliance Fund I., L.P. et al.*, Case No. 22-2442 (3d Cir.).

9. Settlement efforts have continued among the Parties. The Parties propose to maintain the status quo of these appeals until further mediation/settlement efforts are exhausted, pursuant to the Court's June 21, 2022 order entered in Civ. Action Nos. 22-cv-634-CFC, 22-cv-635-CFC (D. Del).

Dated: January 9, 2023

<p>FOX ROTHSCHILD LLP</p> <p><u>/s/ Seth A. Niederman</u></p> <p>Seth A. Niederman (DE Bar No. 4588) Citizens Bank Center 919 N. Market Street, Suite 300 Wilmington, DE 19801 Telephone: (302) 654-7444 sniederman@foxrothschild.com</p> <p>-and-</p> <p>JOSEPH HAGE AARONSON LLC</p> <p>Gregory P. Joseph Gila S. Singer 485 Lexington Avenue, 30th Floor New York, NY 10017 Telephone: (212) 407-1200 gjoseph@jhany.com</p> <p>-and-</p> <p>ZAIGER LLC</p> <p>Jeffrey H. Zaiger Judd A. Lindenfeld 2187 Atlantic Street, 9th Floor Stamford, CT 06902 Telephone: (917) 572-7701 jzaiger@zaigerllc.com</p> <p>-and-</p> <p>COHEN AND GRESSER LLP</p> <p>Douglas J. Pepe 800 Third Avenue New York, NY 10022 Telephone: (212) 957-7605 dpepe@cohengresser.com</p> <p><i>Counsel for the Trustee</i></p>	<p>PACHULSKI STANG ZIEHL & JONES LLP</p> <p><u>/s/ Peter J. Keane</u></p> <p>Laura Davis Jones (DE Bar No. 2436) David M. Bertenthal (CA Bar No. 167624) Peter J. Keane (DE Bar No. 5503) 919 N. Market Street, 17th Floor P.O. Box 8705 Wilmington, DE 19899-8705 (Courier 19801) Telephone: (302) 652-4100 Fax: (302) 652-4400 Email: ljones@pszjlaw.com dbertenthal@pszjlaw.com pkeane@pszjlaw.com</p> <p>-and-</p> <p>GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP</p> <p>Patricia L. Glaser (admitted pro hac vice) Gali Grant (admitted pro hac vice) Matthew P. Bernstein (admitted pro hac vice) 10250 Constellation Blvd. 19th Floor Los Angeles, CA 90067 Telephone: (310) 553-3000 Fax: (310) 556-2920 Email: pglaser@glaserweil.com ggrant@glaserweil.com mbernstein@glaserweil.com</p> <p><i>Counsel for Yucaipa</i></p>
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